

Service Date: January 26, 2000

DEPARTMENT OF PUBLIC SERVICE REGULATION
BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MONTANA

* * * * *

IN THE MATTER OF the)	UTILITY DIVISION
Petition of Blackfoot Telephone Cooperative,)	
Inc. for Arbitration of Contract Negotiations)	DOCKET NO. D99.4.112
With Ronan Telephone Company)	
Pursuant to 47 U.S.C. § 252)	ORDER NO. 6218a
)	
IN THE MATTER OF the)	
Petition of Montana Wireless, Inc. for)	DOCKET NO. D99.4.113
Arbitration of Contract Negotiations)	
With Ronan Telephone Company)	ORDER NO. 6219a
Pursuant to 47 U.S.C. § 252)	

ORDER DISMISSING ARBITRATIONS AND CLOSING DOCKETS

Introduction and Background

On April 28, 1999 Blackfoot Telephone Cooperative, Inc. (Blackfoot) and Montana Wireless, Inc. (MWI) filed petitions for arbitration of a reciprocal compensation arrangement with Ronan Telephone Company (Ronan) pursuant to 47 U.S.C. § 252. One day prior, on April 27, 1999 Ronan filed a petition, pursuant to 47 U.S.C. § 251(f)(2), for suspension of the application of the provisions of 47 U.S.C. § 251(b) to Ronan, and alternate remedies. Docket No. D99.4.111.

On November 3, 1999 the Commission issued Order No. 6174c in Docket No. D99.4.111, which contained a conditional denial of the Ronan petition, allowed Ronan an opportunity to present additional argument and evidence pursuant to a supplemental procedural schedule, and indicated an expectation that the arbitration proceedings would commence immediately. Order No. 6174c, p. 19. Ronan and MWI both filed motions for reconsideration of Order No. 6174c. On December 6, 1999 the Commission voted to deny reconsideration and directed its staff to prepare a procedural order and schedule in the arbitration dockets. Notice of Commission Action, Docket No. D99.4.111, December 8, 1999.

On December 22, 1999 the Commission issued Procedural Order Nos. 6218 and 6219 in these dockets, establishing a schedule and indicating that arbitration decisions would issue 125 days from issuance of the order on reconsideration of Order No. 6174c, Docket No. D99.4.111. Order

No. 6174e, Docket No. D99.4.111, Order on Reconsideration [of Order No. 6174c], Order Denying Petition and Closing Docket, was issued on December 27, 1999.

On December 22, 1999 Ronan filed a Motion to Dismiss these arbitration proceedings. Blackfoot and MWI jointly filed a response to the motion on December 30, 1999. The Commission heard oral argument on the motion on January 11, 2000.

Discussion

Ronan supports its motion by reference to 47 U.S.C. § 251(f)(1)(A) of the Federal Telecommunications Act of 1996 (1996 Act). That section reads in pertinent part:

Exemption. – Subsection (c) of this section shall not apply to a rural telephone company until (i) such company has received a bona fide request for interconnection, services, or network elements, and (ii) the State commission determines (under subparagraph (B)) that such request is not unduly economically burdensome, is technically feasible, and is consistent with section 254

It is not disputed that Ronan is a "rural telephone company." "Subsection (c)" refers to 47 U.S.C. § 251(c), which lists duties that incumbent local exchange carriers are required to perform. (Ronan is an incumbent local exchange carrier, as well as a rural telephone company.) One of those duties is: "Duty to negotiate. – The duty to negotiate in good faith in accordance with section 252 the particular terms and conditions of agreements to fulfill the duties described in paragraphs (1) through (5) of subsection (b) and this subsection." 47 U.S.C. § 251(c)(1). "Subsection (b)" refers to 47 U.S.C. § 251(b). The duty to establish reciprocal compensation is contained at 47 U.S.C. § 251(b)(5).

Ronan contends that 47 U.S.C. §251(f)(1)(A) exempts it from the duty to negotiate a reciprocal compensation arrangement with Blackfoot or MWI, until the exemption is terminated pursuant to 47 U.S.C. § 251(f)(1)(B). Ronan also contends that "duty to negotiate in good faith in accordance with section 252" means the duty to engage in arbitration proceedings. Ronan concedes that it has a duty, under 47 U.S.C. § 251(b)(5), to provide reciprocal compensation arrangements to those requesting them, even though it claims it has no duty to negotiate or arbitrate to determine such arrangements.

Blackfoot and MWI respond that while 47 U.S.C. § 251(f)(1)(A) may exempt Ronan from negotiating and arbitrating over the duties listed at 47 U.S.C. § 251(c), Ronan is not exempt from the duty to negotiate and arbitrate over the duties imposed by 47 U.S.C. § 251(b)(5), including the duty to provide reciprocal compensation at 47 U.S.C. § 251(b)(5).

Decision and Discussion

Although we do not agree completely with Ronan's legal reasoning, we find nonetheless that Ronan's motion should be granted and these arbitrations dismissed. The word "negotiate," as used in 47 U.S.C. § 251(c)(1), does not mean arbitrate, nor encompass both negotiation and arbitration. Negotiation and arbitration are distinct concepts generally. Black's Law Dictionary, Seventh Ed. But most important, they are distinct concepts in the 1996 Act. It is clear at 47 U.S.C. § 252, referenced in 47 U.S.C. § 251(c)(1), that Congress distinguished between negotiation and arbitration. Congress hoped that persons would negotiate first, *i.e.*, communicate in an effort to resolve differences. If negotiation failed, Congress established an arbitration process by which persons could present their disputes to a third party for resolution.

Therefore, contrary to Ronan, we do not dismiss these arbitrations because the rural exemption specifically relieves Ronan of the duty to arbitrate. Rather, we dismiss because we think it plain from 47 U.S.C. § 252(a) and (b) that parties must negotiate before they can arbitrate. Because Ronan is exempt from a duty to negotiate under 47 U.S.C. § 251(f)(1)(A), there can be no negotiation, and therefore, no arbitration. Stated another way, our reading of the 1996 Act is that Congress intended that 47 U.S.C. § 252(b) could not be triggered prior to a good faith negotiation between the parties to resolve the issues. In this case there was no negotiation prior to the filings under 47 U.S.C. § 252(b), because Ronan had no duty to negotiate.

Blackfoot's and MWI's argument that 47 U.S.C. § 251(f)(1)(A) relieves Ronan from the duty to negotiate over duties imposed on it by 47 U.S.C. § 251(c), but not the duties imposed by § 251(b), is simply contrary to the plain language of the 1996 Act. We quoted above the relevant language of 47 U.S.C. § 251(c)(1), and it says there is a duty to negotiate over the duties created at 47 U.S.C. § 251(b), a duty that does not apply to exempt rural companies like Ronan.

Other Matters

Two other motions were filed in the arbitration proceedings: a motion by Ronan to require Blackfoot to file a cost study, and a joint motion from Blackfoot and MWI for establishment of "bill-and-keep" reciprocal compensation. Because we are dismissing the arbitration proceedings, both motions are denied as moot.

Conclusions of Law

1. The Commission has the authority to arbitrate open interconnection issues between telecommunications carriers. 47 U.S.C. § 252(b); § 69-3-837, MCA.

2. Unless exempt, interconnecting telecommunications carriers have a duty to negotiate to resolve interconnection issues. 47 U.S.C. § 251(c)(1); § 69-3-834(2)(c), MCA.

3. Interconnection issues cannot be presented for arbitration unless there has first been an attempt to resolve those issues by negotiation. 47 U.S.C. § 252(b); § 69-3-837(2), MCA.

4. There has been no negotiation of interconnection issues between Ronan and Blackfoot, and Ronan and MWI, because as an exempt rural carrier Ronan has had no duty to negotiate. 47 U.S.C. § 251(f)(1)(A); § 69-3-834(3), MCA.

5. Ronan has the duty to establish reciprocal compensation arrangements with other carriers. 47 U.S.C. § 251(b)(5); § 69-3-834(2)(b).

6. Ronan is an exempt rural carrier until such exemption is terminated by the Commission pursuant to law. 47 U.S.C. § 251(f)(1)(A)(B); § 69-3-834(3)(a)(b), MCA.

Order

The Motion to Dismiss these arbitration proceedings, filed by Ronan Telephone Company, is granted. Other motions filed in these dockets are denied as moot. These dockets are closed.

DONE AND DATED this 25th day of January, 2000, by a vote of 5 to 0.

BY ORDER OF THE MONTANA PUBLIC SERVICE COMMISSION

DAVE FISHER, Chair

NANCY MCCAFFREE, Vice Chair

BOB ANDERSON, Commissioner

GARY FELAND, Commissioner

BOB ROWE, Commissioner

ATTEST:

Kathlene M. Anderson
Commission Secretary

(SEAL)

NOTE: Any interested party may request the Commission to reconsider this decision. A motion to reconsider must be filed within ten (10) days. See 38.2.4806, ARM.